



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Sherwood Medical Company

File: B-231184

Date: August 23, 1988

DIGEST

Bid sample that does not conform to solicitation requirement that hypodermic syringes be supplied in quantity packages of 50-count does not render bid nonresponsive where solicitation did not reasonably advise offerors that packaging requirement was salient characteristic for sample evaluation, and offeror agreed in its bid to furnish packages of 50 in the event it received the award.

DECISION

Sherwood Medical Company protests the rejection of its low bid as nonresponsive, under Veterans Administration (VA) invitation for bids (IFB) No. M1-41-88, and the subsequent award of a 1-year requirements-type contract to Beckton Dickinson, Division of Beckton Dickinson and Company. We sustain the protest.

The IFB solicited bids for various quantity packages of hypodermic syringes (50-count, 25-count and 30-count) and required bid samples of one unit for each quantity bid. The unit size for each item was stated in the purchase item descriptions (PIDs) in the bid schedule; the PID for the items in question required the syringes to be packaged 50 per unit. The IFB stated that bids would be evaluated to determine compliance with the characteristics listed for examination in the solicitation, that the bid samples would be evaluated against the characteristics listed in the PID, and that failure of a sample to conform to the required characteristics would require rejection of the bid.

Although Sherwood submitted the low bid for the items in question, it provided its standard commercial package of 20 as a sample instead of a package of 50 as required in the PID. Sherwood's sample was accompanied by a letter stating that, in the event it received the award, it would furnish packages of 50 as required by the solicitation. The

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contracting officer, however, found Sherwood's bid to be nonresponsive because its sample did not demonstrate compliance with the PID packaging requirement. Sherwood thereupon filed this protest with our Office.

We find that it was improper to reject Sherwood's bid as nonresponsive based on the bid sample packaging requirement. While the failure of a bid sample to conform to a stated salient characteristic renders a bid nonresponsive, a sample may be evaluated only for the specific characteristics specified in the solicitation for sample testing; a sample need not meet every specification requirement that the items to be furnished under the contract must meet. See ATD-American Co., B-227134, July 17, 1987, 87-2 CPD ¶ 58. We not consider the packaging requirement of 50 per unit to be such a salient characteristic here.

The VA does not argue, and nothing in the record indicates, that it was necessary to solicit bid samples to evaluate an offeror's ability to package syringes 50 per unit, and the IFB does not set out specific, material standards against which the packaging was to be tested. In contrast, the IFB requirements covering the syringes themselves and their individual wrapping did include detailed standards for sample testing purposes, suggesting to us that samples really were requested for the purpose of demonstrating the characteristics of the syringes, not the packaging. If the VA intended to evaluate samples for conformance to requirements beyond those relating to the characteristics of the syringes themselves it should have made this clear in the solicitation.

Since Sherwood expressly agreed at bid opening to supply syringes packaged 50 per unit, there is no question of its legal obligation to do so, and thus no question that the bid was responsive in this regard. See generally Warren Corp., B-229669.2, Mar. 10, 1988, 88-1 CPD ¶ 249; ATD-American Co., B-227134, supra.

The protest is sustained.

By letter of today to the Administrator of Veterans Affairs, we are recommending that the agency terminate for the convenience of the government the contract awarded to Beckton Dickinson and make award to Sherwood for the remainder of the 1-year contract term for the 50-count

syringe packages. In addition, since the award to Beckton Dickinson was improper, we find Sherwood entitled to reimbursement of its costs of filing and pursuing its protest. 4 C.F.R. § 21.6(d) (1988). Sherwood should submit a claim for such costs directly to the VA.

for *Milton F. Jordan*
Comptroller General
of the United States